

revised APIs are within the applicable SBIs and within the caps or the maximum carrier common line rate. Tariffs proposing new services should not require detailed workpapers. In addition, as discussed below, the Commission should reduce the amount of data required for annual access tariff filings.

The Commission proposes to require streamlined tariffs that propose both rate increases and rate decreases to be filed on 15 days' notice.<sup>33</sup> This would also be contrary to the intent of the Telecommunications Act of 1996. Because most access services contain numerous individual rate elements, a restructure tariff that reduces most rate elements for a particular service may contain rate increases for individual elements. Therefore, the Commission should look at the overall effect on the API for the service category to determine if a tariff filing should be classified as an increase or a decrease. If the overall effect of individual element changes causes the API to decline, then the tariff should be classified as a decrease, and be filed on 7 days' notice. The only exception should be for the annual access tariff filing, which is more complex and may require additional scrutiny even if the overall effect of the rate changes causes a reduction in the API. New services should be filed on 7 days' notice, since it is in the public interest to introduce new and innovative services that respond to consumer demand as soon as possible.

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<sup>33</sup> See *NPRM* at para. 26.

NYNEX agrees with the Commission's tentative finding that the 7 and 15 day notice periods should be based on calendar days, not working or week days.<sup>34</sup> This is consistent with other notice periods in the Act, and with the Commission's tariff notice requirements.

NYNEX supports the Commission's proposal to require petitions against LEC streamlined tariffs that propose rate reductions to be filed within 3 days, and to require the LECs to file replies to such petitions within 2 days after service of the petition.<sup>35</sup> NYNEX also supports the proposals that if a due date falls on a weekend or a holiday, that the document should be filed on the next business day, and that, when computing time periods, intermediate holidays and weekends will be included.<sup>36</sup> However, the Commission should not adopt the 3 day and 2 day filing periods for streamlined tariffs that are filed on 15 days' notice. The Commission's current rules provide that if a tariff is filed on at least 15 days' notice and less than 30 days' notice, petitions against the tariff must be filed within 7 days, and replies to such petitions within 4 days of service.<sup>37</sup> There is no reason to shorten these time periods. NYNEX supports the

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<sup>34</sup> See *id.*

<sup>35</sup> See *id.* at para. 28. The Commission should not accept late-filed petitions, replies, or comments without a significant showing of good cause. The current 14 day notice period for within-band filings has resulted in the late filing of many petitions, yet replies are still due within 3 days of service. If the Commission did not require strict adherence to its rules, parties could game the process to prevent the Commission from conducting pre-effective review, and try to make it more likely that the Commission would prevent a tariff from going into effect.

<sup>36</sup> See *id.*

<sup>37</sup> See 47 C.F.R. Section 1.773(a) and (b).

Commission's proposal to allow further comments only after the Commission has issued an order establishing a tariff investigation.<sup>38</sup>

The Commission should not find that these procedures would foreclose any party's right to seek suspension and investigation of a tariff under Section 204(a). That section has always been interpreted to allow a party to seek suspension and investigation of a tariff filing by filing a petition against the tariff within the pre-effective filing periods established in the Commission's rules. Under Section 204(a), a tariff may be suspended and investigated only through Commission order issued before the effective date. After a tariff becomes effective, a person may file a complaint seeking an investigation under Section 208 of the Act. This preserves the rights of all interested persons to seek Commission review of LEC tariffs.

NYNEX agrees with the Commission's proposal to routinely impose a standard protective order whenever a carrier claims in good faith that information in a streamlined tariff filing contains confidential data.<sup>39</sup> In the Commission's recent inquiry into its policy on the treatment of confidential data, NYNEX suggested that the Commission establish a nondisclosure policy for LEC cost data.<sup>40</sup> In the competitive environment that will be created by the

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<sup>38</sup> See *NPRM*, para. 28.

<sup>39</sup> See *id.* at para. 29.

<sup>40</sup> See Comments of Joint Parties, filed June 15, 1996, in GC 96-55, Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission.

Telecommunications Act of 1996, it would be highly detrimental to the LECs to routinely reveal their cost data to competitors. The current rules for obtaining confidential treatment of data accompanying tariff filings cause delay that is inconsistent with the short notice periods that Congress mandated for streamlined tariffs. The Commission should permit LECs that claim confidential treatment to limit disclosure of confidential data to those who execute standard protective agreements.<sup>41</sup>

The Commission should also preserve the right of a LEC to seek nondisclosure of particularly sensitive data if the circumstances warrant it. The Commission should allow a LEC to file a request for such treatment at the time that a tariff is filed. The Commission should allow the tariff to go into effect on schedule if it finds that there is no basis for suspension and if the Commission finds that public access to the confidential data is not necessary to assist the Commission in reviewing the tariff.

**D. Annual Access Tariff Filings.**

The Commission recognizes that the annual access tariff filings qualify for streamlined treatment under Section 204(a)(3), and could be filed, at the carriers' option, on 7 or 15 days' notice, but it proposes to continue to require the LECs to file their Tariff Review Plan ("TRP") data prior to the tariff filing.<sup>42</sup> In the

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<sup>41</sup> In NYNEX's June 14, 1996 Comments in GC 96-55, we proposed a Model Protective Agreement that the Commission could adopt for use in all tariff review proceedings.

<sup>42</sup> See *NPRM* at paras. 30-31.

Commission's view, the TRP data are not subject to the notice requirements of Section 204(a)(3) if the Commission does not require the LECs to include any information on their proposed rates.

The Commission's proposal would circumvent the clear intent of Congress that a streamlined tariff filing, including the data required to support the tariff filing, be filed on 7 or 15 days' notice. It would give other parties an extended period to comment on the data supporting the annual filing, while limiting the LEC to 2 days (in the case of a 7 day filing) or 4 days (in the case of a 15 day filing) to prepare replies. Moreover, pre-filing the TRP is not necessary to enable the Commission to review annual access tariff filings. Annual access tariff filings have become much less controversial under price caps, as they are limited to rate changes, and must include rates that are within the PCIs and SBIs. For instance, in the 1996 Annual Access Tariff Proceeding, only two comments were directed at NYNEX's tariff, the commenters proposed less than a \$6,000 adjustment to NYNEX's proposed rates, and the Commission did not accept even that adjustment.

Rather than adding pre-filing requirements to the annual access tariff filings, the Commission should take this opportunity to streamline the process. The size of the annual access tariff filings and the work effort to develop them have grown enormously over the years. For example, NYNEX had 1,800 rate elements in the 1992 filing. In the 1996 filing, the number of elements had grown

to 7,600, a 422% increase. The work to populate those rate elements with demand and to calculate the appropriate indices is substantial. However, the range of issues that are raised in annual access tariff proceedings is relatively small, primarily relating to matters such as exogenous cost adjustments, for which calculations are not specified in the Commission's rules. The Commission should streamline the process by reducing the amount of data that are required to support the price cap indexes. The Commission should not require a detailed list of demand by rate element, cites of Part 69 waivers, and discussions of how the indexes were developed. The supporting data should include (1) a transmittal letter; (2) the affected tariff pages and proposed rates; (3) a summary description and justification explaining the major exogenous cost changes and the overall rate and revenue changes; (4) workpapers for exogenous cost changes; and (5) the full TRP. Since the annual filing is more extensive than normal tariff filings, the Commission could require the annual access tariff to be filed on 15 days' notice, even if the overall effect of rate increases and rate decreases produced a net reduction in the APIs.

**E. Investigations.**

The Commission should adopt standard procedural schedules for investigations of streamlined tariff filings.<sup>43</sup> Under Section 204(a) of the Act, the Commission has five months to conclude investigations of tariff filings.

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<sup>43</sup> See *id.* at para. 33.

Normally, such investigations are conducted as comment and reply proceedings. Therefore, there is no need for third-party discovery or other procedures that would apply to complaint proceedings. The Commission should adopt the following schedule for filings in a tariff investigation, calculated from the day that the tariff effective date;

21 days -- LEC direct case, which would respond to issues that were identified in the Commission's order establishing the investigation

35 days -- comments/oppositions to LEC direct case

49 days -- LEC reply to comments/oppositions.

This would leave the Commission over 3 months to reach its decision in a Section 204(a) investigation. In complex cases, or where the Commission could not identify the issues prior to the tariff's effective date, the Commission could provide for a customized procedural schedule.

While, as the Commission notes, the Act does not permit the Commission to delegate authority to issue an order terminating a Section 204(a) investigation, the Commission may issue an order adopting a memorandum or recommendation of the Common Carrier Bureau.<sup>44</sup> The Commission should not adopt informal mediation procedures for tariff investigations under Section 204(a). Investigations of tariff filings normally involve public interest issues rather than disputes between individual parties. The Commission should decide such issues based on the publicly filed comments and the statutory standards.

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<sup>44</sup> See *id.*

**F. Notice Requirements.**

The Commission should modify the notice requirements for price cap carriers in Section 61.58(c) of its rules as follows:

Permit streamlined tariffs to be filed on 7 days' notice where the API is reduced for all service categories

Permit streamlined tariffs to be filed on 15 days' notice where the API for any service category is increased

Permit streamlined annual access tariffs to be filed on 15 days' notice

Permit LECs the option to file streamlined tariffs on notice periods longer than 7 or 15 days without losing the status of streamlined tariff filings.<sup>45</sup>

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<sup>45</sup> This would mean, of course, that such filings would be "deemed lawful" under Section 402(a)(3).



**V. Conclusion.**

The Commission should adopt policies and rules that would promote both the letter and the spirit of the Congressional directive to streamline the tariff-filing process. This is an integral part of the overall purpose of the Telecommunications Act of 1996 -- to provide for a pro-competitive, deregulatory national policy framework for the telecommunications industry.

Respectfully submitted,

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Dated: October 9, 1996